

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**ENTERED**

March 10, 2023

Nathan Ochsner, Clerk

JEWELL THOMAS,

Plaintiff,

VS.

JERRY SANCHEZ, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:22-CV-00129

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Pending before the Court is Plaintiff's Motion to Amend Complaint (D.E. 27), filed pursuant to Federal Rule of Civil Procedure 59(e), seeking to alter the final judgment so as to proceed on certain claims. On December 15, 2022, United States Magistrate Judge Julie K. Hampton issued a "Memorandum and Recommendation to Deny Plaintiff's Motions to Amend and to Alter and Amend the Judgment" (D.E. 28), recommending that Plaintiff's motion be denied. Plaintiff timely filed his objections (D.E. 29) by placing them in the mail prior to the filing deadline. D.E. 29, p. 4.

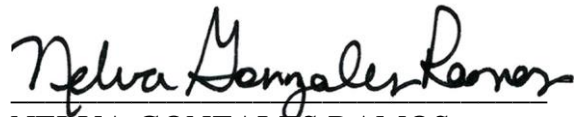
Plaintiff first argues that, pursuant to Court Order (D.E. 13), he is proceeding *in forma pauperis* (IFP) without the requirement to prepay the filing fee (but is paying over time) and therefore any dismissal is without prejudice and is not a final judgment. This is contrary to (1) the Court's Order Adopting Memorandum and Recommendation (D.E. 25), which states that Plaintiff's Eighth Amendment and Americans with Disabilities Act/Rehabilitation Act (ADA/RA) claims are dismissed with prejudice and (2) the Court's Final Judgment (D.E. 26), reciting that the dismissal resulted in a final judgment. Plaintiff

offers no authority to support his claim that any IFP status changes those results. The first objection is **OVERRULED**.

Second, Plaintiff complains about the Court's denial of his effort to replead his ADA/RA claims, arguing that, after the original M&R (D.E. 17) and before final judgment, he submitted adequate amended pleadings. As the Court noted, new claims submitted after the M&R has been issued are not timely. D.E. 25, p. 4. And Plaintiff's recitation of multiple efforts to amend merely reinforces the untimeliness, undue delay, repeated failures, and futility of proposed amended pleadings. His most recent attempt (D.E. 27-1) remains insufficient in material respects, rendering the claims improperly conclusory. The second objection is **OVERRULED**.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memorandum and Recommendation, as well as Plaintiff's objections, and all other relevant documents in the record, and having made a de novo disposition of the portions of the Magistrate Judge's Memorandum and Recommendation to which objections were specifically directed, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, Plaintiff's motion to amend pleadings or to alter and amend the judgment (D.E. 27) is **DENIED**.

ORDERED on March 10, 2023.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE